

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Apr 07, 2023

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

CARLA NEWKIRK, on her own
behalf and behalf of her minor child
JD,

Plaintiff,

v.

ROBERT FISHBACK; JOHN GUY;
RHASHA NEWKIRK; IRIS
NEWKIRK; JESSICA JORDAN;
ERIC JORDAN; JAMES MCGARY;
and DOES 1-100,

Defendants.

NO: 2:23-CV-0093-TOR

ORDER DISMISSING CASE
WITHOUT PREJUDICE

BEFORE THE COURT is Plaintiff's *pro se* Complaint *in forma pauperis*. Pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii), "[n]otwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that the action or appeal fails to state a claim upon which relief may be granted."

ORDER DISMISSING CASE WITHOUT PREJUDICE ~ 1

1 A complaint fails to state a claim upon which relief may be granted if it
2 lacks a cognizable legal theory or lacks sufficient facts to support a cognizable
3 legal theory. *Balistreri v. Pacifica Police Dept.*, 901 F.2d 696, 699 (9th Cir.1990).
4 Plaintiff's Complaint lacks sufficient facts to support a cognizable legal theory.
5 Accordingly, Plaintiff's Complaint must be dismissed without prejudice.

6 Moreover, this District Court in the Eastern District of Washington State
7 does not have jurisdiction nor venue over this cause of action or the parties.

8 Pursuant to 28 U.S.C. § 1915(a)(3), "[a]n appeal may not be taken *in forma*
9 *pauperis* if the trial court certifies in writing that it is not taken in good faith." The
10 good faith standard is an objective one, and good faith is demonstrated when an
11 individual "seeks appellate review of any issue not frivolous." *See Coppedge v.*
12 *United States*, 369 U.S. 438, 445 (1962). For purposes of 28 U.S.C. § 1915, an
13 appeal is frivolous if it lacks any arguable basis in law or fact. *Neitzke v. Williams*,
14 490 U.S. 319, 325 (1989).

15 The Court finds that any appeal of this Order would not be taken in good
16 faith and would lack any arguable basis in law or fact. Accordingly, the Court
17 hereby revokes Plaintiff's *in forma pauperis* status. If Plaintiff seeks to pursue an
18 appeal, she must pay the requisite filing fee.

19 **ACCORDINGLY, IT IS HEREBY ORDERED:**


20 1. Plaintiff's Complaint (ECF No. 1) is **DISMISSED without prejudice.**

1 2. Plaintiff's *in forma pauperis* status is hereby **REVOKED**.

2 The District Court Executive is hereby directed to enter this Order, furnish a
3 copy to Plaintiff, and **CLOSE** the file.

4 **DATED** April 7, 2023.




THOMAS O. RICE
United States District Judge